* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : February 22, 2007
Date of Decision : March 16, 2007

\+ CONT. CAS. (C) 584/2003

\# BALRAJ (Since deceased) Through LRs..... PETITIONERS
! Through : Ms. Amrita Sanghi, Advocate

versus

$ UNION OF INDIA & ORS. ..... RESPONDENTS
^ Through: Mr. Sanjay Poddar, Advocate and
Ms. Sangeeta Chandra, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. Complaining of wilful disobedience of the orders dated August 8, 1994, November 23, 1994 and July 24, 2003 passed by this court in Writ Petition (C) No. 227 of 1988, the petitioners have filed this contempt petition. The petitioners contend that on 8.8.1994, while disposing of W.P (C) No. 227 of 1988, this court had directed the respondents to "give back to the petitioners the physical possession of the land in question." They say that the possession of the land located in Khasra No. 424 measuring 12 bighas and 11 biswas in village Khirki, Delhi (hereafter 'land in question'), has not been given to them despite the aforementioned orders that have attained finality.

Facts of the Case

2. The facts leading to the filing of the present contempt petition are that a notification was issued on 5.11.1980 under Section 4 of the Land Acquisition Act 1894 ('Act') as part of a large scale acquisition for the public purpose of the planned development of Delhi. This was followed by a declaration dated 7.6.1985 under section 6 of that Act. The landing question figured among the lands included in the Section 4 notification. By an Award No. 20/87-88 dated 5.6.1987, the compensation in respect of the lands acquired was determined.

3. Although the land to the extent of 1088 bighas was to be acquired, the Award that finally drawn up was in respect of only 427 bighas. This was on account of certain categories of lands being excluded from the purview of the Award. These categories were indicated in Paras 3,4,5 and 6 of the Award. Para 3 indicated the Khasra numbers of lands "in the ownership of the government according to the revenue record." Para 4 indicated the Khasra numbers of lands "in the ownership of the Custodian and in possession of the Land and Housing Department." Para 5 referred to a Qubristan in Khasra numbers 2311/81 measuring 4 bighas and 13 biswas. Para 6 of the award referred to "some Khasra numbers in the ownership of the Custodian Department but in possession of other cultivators as per revenue record." The land in question figures in this list in para 6 of the Award. In respect of the lands mentioned in para 6, a note appended to the award explained: "for these Khasra numbers, no compensation for crops is being given since the crops have already been harvested." It was further noted in the Award itself that "the total area in S. No. 3,4 and 6 comes to 242-01 and can be handed over by book transfer…".

4. What is therefore clear from the award itself is that the land in

question belonged to the Custodian Department in terms of the revenue record. However, there was some cultivation that had earlier taken place on the said land. Since there was no question of the government acquiring land which already belonged to it, the only question was whether compensation was required to be paid for the crops. By the time the Award came to be made, the crops on the said land had already been harvested. Therefore, it was decided that no compensation was required to be paid in respect of such crops. The resultant position was that the land in question was left out of the Award altogether.

5. Admittedly the names of the predecessor-in-interest of the petitioners, Shri Balraj, his son Shri Rajeev, and Shri Harbans Lal, did not figure anywhere in the Award. Nevertheless, on 5.1.1988 they filed an application under Section 18 of the Act before the Land Acquisition Collector (LAC) seeking a reference to the District Judge for higher compensation for the land in question. In para 1 of the said application they asserted: “That the petitioners are in possession of land bearing Khasra No. 2222/54 (12 bighas 11 biswas) situated in the Revenue Estate of village Khirki, Delhi for the last 15 years, up to the date of the Award.” They were rightly informed by the officials that it would not be possible to forward such an application to the District Court since the names of the petitioners did not figure anywhere in the Award.

6. Soon thereafter, on 19.1.1988, Shri Balraj, his son Shri Rajeev, and Shri Harbans Lal filed W.P. (C) No.227 of 1988 in this Court contending in para 2 that: “the petitioners have been in possession of land measuring 12 bighas and 11 biswas in village Khirki Delhi for the

last more than seven years since 1980-81." The petitioners claimed in the writ petition that their possession was duly recorded in the Khasra girdawari. Annexed to the writ petition as Annexure A-1 were photocopies of the Khasra Girdawari entries in respect of the land in question. The petitioners claimed that they were not aware of the Award having been made since they were never given notices under Sections 9 and 10 of the Act. Accordingly, they were unable to file their claims. It was further stated in the petition that they were, in their capacity as persons in continuous possession of the land in question much prior to the Award "persons interested as per Section 3 (b) of the Act." The petitioners did not dispute the fact that the recorded owner of the property is the Custodian Department. Nevertheless, they claimed in the petition that they ought to have received compensation for the land which was acquired. The main prayer in the writ petition reads as under:

> "Issue a writ in the nature of Certiorari for quashing the award No.20/87-88 dated 5.6.1987 relating to village Khirki, Delhi in so far as 12 bighas 11 biswas of land comprised in Khasra No.424 is concerned and direct the respondent by issue of a Mandamus to assess the compensation for the same on account of possession of the petitioners."

Although initially in the writ petition, there was no prayer made for directing the respondents to put the petitioners in possession of the land in question, an amendment application was filed to incorporate such a prayer. There was no change however in the pleadings. That amendment was allowed by an order dated 7.11.1989.

Balak Ram Gupta Case

7. The large-scale acquisition for the planned development of Delhi initiated by the Section 4 notification dated 5.11.1980 was challenged in this Court in several writ petitions which came to be disposed of by the judgment dated 25.7.1987 of a Full Bench of this Court in ***Balak Ram Gupta (I) v. Union of India*** AIR 1987 Del 239 (FB). Consequential orders were made by a Division Bench of this Court on 18.11.1988 [***Balak Ram Gupta (II) v. Union of India*** (1989) 37 DLT 150 (DB)].

8. The ground on which the large scale acquisition was quashed in ***Balak Ram Gupta*** was that individualized hearing was not given by the LAC to each of the land holders who had filed objections under Section 5 A of the Act. There were 73 petitions in the batch of cases in which the said judgment came to be delivered. The question then arose whether the entire acquisition proceedings even in respect of those who were not part of this batch of 73 petitions, stood quashed. The Hon'ble Supreme Court explained in later cases, viz., ***Abhey Ram v. Union of India*** (1997) 5 SCC 421, ***Delhi Administration v. Gurdeep Singh Uban(I)*** (1999) 7 SCC 44 and ***Delhi Administration v. Gurdeep Singh Uban(II)*** (2000) 7 SCC 296 that the relief granted in the ***Balak Ram Gupta*** was confined to the 73 petitioners in whose cases the common judgment was rendered and did not have the effect of quashing the entire land acquisition proceedings. A distinction was also made between those who had filed objections under Section 5 A and whose who had not. In the latter cases, it was clarified, no challenge to the validity of the land acquisition proceedings on the strength of ***Balak Ram Gupta*** could be entertained.

9. Meanwhile, in several writ petitions pending in this Court, certain standard type orders came to be passed where parties would agree that the matter stood covered by the judgment in ***Balak Ram*** Gupta and a direction would be issued that if the land holder returned the compensation received by him, the possession of the lands acquired would be restored to him. Later when some of these cases were taken up in appeal to the Hon'ble Supreme Court, it was clarified that the intention in ***Balak Ram Gupta*** was not to quash the entire acquisition proceedings in respect of all lands notified in the section 4 notification. In other words barring the 73 cases which were covered by the judgment in ***Balak Ram Gupta***, it was not be open to any other holder of a land included in the Section 4 notification to claim relief similar to that given to the 73 petitioners in ***Balak Ram Gupta***.

The Order dated 8.8.1994

10. On 8.8.1994, when the writ petition of the petitioners was listed for hearing, a learned Single Judge of this Court passed the following order:

> "It is not disputed that the present writ petition is covered by the judgment of the Division Bench in **Balak Ram Gupta vs. Union of India & Others** C.W.P. No. 1639/85 decided on November 18, 1988 by which the notification in question was quashed. That judgment was followed by yet another Division Bench judgment of this court in **Banwari Lal Sharma vs. Union of India & Others** C.W.P. No. 2365/90. As it is not disputed that both these judgments apply to the facts of the present case, I direct the respondents to give back to the petitioners the physical possession of the land in question.

> The petitioners say that they have not received any compensation. In case any compensation has been received. The order would be subject to their paying back the amount of compensation plus interest at 12% per annum calculated from the date of the receipt of the compensation till the date the cheque or draft is tendered by them personally to the respondents.
>
> There will be no order as to costs."

A plain reading of the order shows that a statement was made to this Court that case stood covered by ***Balak Ram Gupta***. Acting on such a statement, which was not opposed by the counsel for the respondents at that point in time, this Court disposed of the writ petition and proceeded to give a direction to the respondents to put the petitioners back in possession of the land in question. Interestingly, this court was informed that the petitioners had not received any compensation. It then observed that "in case any compensation has been received, the order would be subject to their paying back the amount of compensation plus interest at 12% per annum calculated from the date of receipt of the compensation till the date of the cheque or draft is tendered by them personally to the respondents."

11. There were several reasons why the petitioners here, i.e. Shri Balraj and others, could not have been given the benefit of the judgment in ***Balak Ram Gupta***. Some of these reasons were available even at that point in time but not brought to the attention of the Court by counsel for the parties. In the first place, the land in question was, as already noticed, outside the purview of the land acquisition Award. It was land belonging to the government and there

was no question of the government acquiring its own land. Consequently, there was no occasion for the land acquisition proceedings to stand 'quashed' in relation to the land in question. Secondly, the petitioners in the instant case had not filed any objections under section 5A of the Act. Therefore it was not open to these petitioners to get any relief in terms of the ***Balak Ram Gupta*** judgment as later explained by the Hon'ble Supreme Court.

12. Thirdly, the case set up by the petitioners themselves in the petition as regards their possession showed that they came into possession only some time in 1981 after the issuance of the Section 4 notification. This is clear from the extracts of the Khasra Girdawaris filed by the petitioner with their writ petition. Therefore at the time of issuance of the Section 4 notification they were not even in possession of the lands in question. Also, the writ petition was totally silent on when the petitioners lost possession and to whom. The Court also therefore did not advert to this aspect. Clearly, at this point in time neither the Custodian Department, nor the Delhi Development Authority (DDA) or the Land and Buildings Department were parties to the writ petition. Also, Therefore there was no question of putting the petitioners back into possession consequent upon the quashing of land acquisition proceedings.

13. Fourthly, since the petitioners admittedly did not file claims, their names did not figure in the Award and they did not receive any compensation. As already recorded in the Award the crops already stood harvested and so no compensation was payable on that score either. So the question of their returning the compensation received, as was part of the standard order in some other cases, also did not

arise.

Developments after 8.8.1994

14. Perhaps conscious of these difficulties, on 2.9.1994 the petitioners filed an application, CM No. 6845 of 1994, in the disposed of writ petition. The prayer made in this application was for a modification of the order dated 8.8.1994. It was contended by the petitioners that in the order dated 8.8.1994, no time limit had been set down for handing over of possession of the land in question and now they requested the court to indicate such time limit. They in fact prayed that the land should be asked to be handed over within 15 days. A statement was made on 23.11.94 before the court that the "counsel for the parties agree that the respondents will return possession of the land in question to the petitioners within one month from today, subject to other conditions mentioned in the earlier order." The court then directed the matter to be further notified on 20 January 1995.

15. When the matter came up for hearing on 22.3.1995, the counsel for the Land Acquisition Collector (LAC) took some time for filing an affidavit to indicate if possession had been handed over to the petitioners or not. Consequent thereto, an affidavit was filed by the LAC, Shri Surjit Lal, on 15.5.1995. The relevant portions of the said affidavit read as under:

> "8. At the time of making the Award, it was discovered that the land in question measuring 12 Bigha 11 Biswas was actually in the ownership of the custodian and not with the Petitioners. This has been mentioned in para 1(6) of the Award and that the land in question is in possession of some cultivators. A copy of the Award dated 5.6.87 - - is annexed hereto as Annexure R-2. As per Khasra Girdawari name of

cultivators mentioned are Balraj (2-0) Rajeev (2-0) and Harbans Lal (2-0).

9. In para 2 of the Award it has been specifically mentioned that the land in question can be handed over by a book transfer. In other words, what this means is that the custodian will make a book entry and transfer the land in favour of the agency for whose benefit it has been acquired which in this case is the Delhi Administration and thereafter the Delhi Development Authority. The Land Acquisition Collector does not come into the picture at all for the purpose of handing over the possession since it is only a book transfer. However, after the book transfer is effected, a communication is sent to the Land Acquisition Collector to this effect. In the present case, no such communication has been received by me or by my office. I have also telephonically verified from the office of the D.D.A. and I have been informed that the book transfer was not, in fact, effected.

10. In the absence of a book transfer having been effected, the position is that the custodian remained the owner of the property after the notification under Section 4 and 6 was struck down by this Hon'ble Court. Since no book transfer has been made the DDA did not have possession of the land in question, and it is unlikely that the Petitioners were dispossessed. In any event, it is respectfully submitted that neither I nor my office has taken over the possession of the land in question nor was I or my office ever in possession of the land in question and therefore, the question of handing over the possession thereof to the Petitioner does not arise."

16. In view of the above position explained in the affidavit of the LAC, counsel for the petitioner made a statement in the court on 17.5.1995 that the petitioner would amend the writ petition "and will incorporate the appropriate authority as respondent." Later on 18.1.1996, the petitioner was permitted to add Delhi Administration

as party respondent." On 16.9.1997 notice was issued to the Land and Building Department of the Delhi Administration and to the standing counsel for DDA. What appears to have not been noticed at this stage was that the possession of the petitioners as per the Khasra Girdawaries was only with effect from 1981, i.e. after the Section 4 Notification and that the owner of the lands was the Custodian Department, which in this case was the Ministry of Rehabilitation.

17. Thereafter a lot of time appears to have been taken up in bringing the legal representatives of the petitioner No.1 on record and in trying to serve the other added respondents. On 24.7.2003 the same CM no. 6845 of 1994 was listed before this court when it was informed to the court that the order dated 8.8.1994 was not complied with by the official respondents. The court then directed that "if the order is not complied with by the next date, they shall remain personally present before the court."

18. On 1.10.2003, the present contempt petition was filed and notice was directed to issue on 17.10.2003.

19. Meanwhile, a review petition being R.A. No. 14096 of 2003 was been filed by the respondents seeking recall of the order dated 8.8.1994. An application for condonation of delay was also filed. This was dismissed by a Division Bench of this Court on 19.2.2004. In the said order the Court briefly referred to the fact that the leading case of ***Balak Ram Gupta*** had been followed by this Court "in number of cases." It dismissed the application for condonation of delay. Nevertheless it dealt with the merits of the review petition and held that the grounds urged were not urged earlier when the writ petition

was disposed of on 8.8.1994 by a consent order. It further held that the applicant, the Land and Building Department, could not take the plea that it had not been impleaded when the said writ petition came to be disposed of since the land acquiring authority was the Union of India which was a party to the petition. The Court's attention at this stage does not appear to have been drawn to the orders of the Hon'ble Supreme Court in ***Abhey Ram v. Union of India*** (*supra*), ***Delhi Administration v. Gurdeep Singh Uban (I)*** (*supra*) and ***Delhi Administration v. Gurdeep Singh Uban (II)*** (*supra*) delivered in 1997, 1999 and 2000 respectively.

20. The Hon'ble Supreme Court on 23.4.2004 dismissed the special leave petition filed by the Union of India against the orders dated 8.8.1994 and 19.2.2004 on the ground of delay. A review petition filed thereafter in the Hon'ble Supreme Court was also dismissed on 23.4.2004. The present contempt petition, which had been stayed by the Supreme Court, was then sought to be revived.

21. As a next step, the Delhi Development Authority (DDA) filed CM No.8472 of 2004 in the disposed of WP(C) No. 227 of 1988 seeking discharge from the liability of implementing the orders dated 8.8.1994, 23.11.1994 and 24.7.2003. The said application was not entertained by this Court. By an order dated 19.1.2005, it was disposed of after noting the fact that the contempt petition had already been filed and it was observed that the DDA "shall have liberty to file its reply in the said contempt petition."

Submissions of Counsel

22. The contention of Ms. Amrita Sanghi, learned counsel for the petitioners is that the orders of which the petitioners are seeking implementation have been confirmed by the Hon'ble Supreme Court and twice by this Court and therefore there can be no question of not implementing the said orders. She further submits that it is not open to a Court considering the contempt petition to go behind the merits of the decisions of which implementation is being sought. In particular, she places reliance upon the judgments of the Hon'ble Supreme Court in ***State of Bihar vs Rajendra Singh*** AIR 2004 SC 4419, ***K.G. Derasari vs. Union of India*** (2001) 10 SCC 496, ***Bank of Baroda vs. Sadruddin Hassan*** (2004) 1 SCC 360. She also places reliance upon the judgments in ***R. L. Jain (D) vs. DDA*** JT 2004 (3) SC 272 and ***Union of India vs. Shakuntala Gupta*** (D)2002 (7) SCC 98.

23. Without prejudice to this contention, she states that under Sec. 3(b) of the Act the words 'person interested" would embrace the owner, occupier as well as any other person who has got substantial interest in the land sought to be acquired. According to her the land in question was in possession of the petitioners and the ownership rights were with the Ministry of Rehabilitation. Since the entire acquisition proceedings had been quashed, possession prior to the acquisition proceedings as reflected in the khasra girdawaries has to be restored. Accordingly, the petitioners are entitled to get back possession of the land in question. She also points out that as recorded in these proceedings in this Court on 23.11.1994, the respondents had undertaken to hand over the possession of the land in question to the petitioner within a period of one month thereof. She says that the breach of this undertaking unmistakably constitutes

contempt of Court for which the respondents ought to be punished. Finally, she refers to the fact that as per the khasra girdawri dated 8.11.2005 possession of the land is still with the Government of India even after various orders passed by this Court.

24. In reply, Ms. Sangeeta Chandra learned counsel for the DDA refers to the affidavits and written submissions filed by the DDA and submits that at no point in time was the DDA in possession of the lands in question. There was no question of the DDA, therefore being required to hand over the possession of the land in question to the petitioner. She also refers to a joint inspection report of 19.5.2004 drawn up after a meeting of the concerned officials and the petitioners in the office of ADM (South). That report refers to the fact that the petitioners were unable to inform the respondent authorities the exact date on which possession was taken from them. It also showed that as per the revenue records the owner of the lands in question was even as of that date, the Ministry of Rehabilitation. At no point in time therefore was there any dispossession of the petitioners from the land in question at the behest of either the Land and Building Department or the DDA.

25. Mr. Sanjay Poddar, learned counsel appearing for the other respondents also refers to this report dated 19.5.2004. He further refers to the prevaricating stands taken by the petitioners in the reference application filed under Section 18 of the Act and soon thereafter in the writ petition. While in the reference application they claimed to be in possession for about 15 years, in the writ petition they asserted that they were in possession for about seven years after 1980-81. Mr. Poddar states that is if in fact the petitioners were in

possession of the lands in question, there was no substance in the plea that possession must be restored to them. If, on the other hand, they claim that they have lost possession, then they should indicate whom they lost the possession to and when. A vague statement in this regard has lead to an order which cannot be implemented. Further Mr. Poddar points out that since the ownership of the lands in question is with the Ministry of Rehabilitation, Government of India and the petitioners have not demonstrated any right title or interest to the land, the question of handing over the possession of such land to the petitioners does not arise.

Scope of the writ petition and the order dated 8.8.1994

26. The first point that requires to be considered is whether there has been a willful disobedience of the orders dated 8.8.1994, 23.11.1994 and 24.7.2003 passed by this Court in WP(C) No. 227/1988. It is important to note that the principal prayer in the writ petition was a challenge to the Award to the extent that the petitioners were not mentioned as being eligible for compensation. The grievance of the petitioners in the writ petition was therefore they should be compensated for the land in question. They claim to be in possession of the land not in the capacity as owners but in their capacity as cultivators. Nowhere in the writ petition did the petitioners indicate when exactly they came into possession of the land in question. The earliest date in the khasra girdawaries annexed to the writ petition shows that they came into possession in 1981, i.e. subsequent to the notification dated 5.11.1980 under Section 4 of the Act. Therefore they were not in possession of the lands in question when the land acquisition proceedings commenced. Further it is not without significance that the petitioners acknowledge that the registered

owner of the land in question is the Ministry of Rehabilitation. In that view of the matter the question of the lands forming part of the land acquisition proceedings does not arise because the Government would not be seeking to acquire land which already belongs to it.

27. The other relevant factors that were not noticed by the courts earlier were as follows. There was no mention of the names of the petitioners in the Award; the land in question figured in that category of lands belonging to the government but of which certain other persons were in cultivatory possession; by the time the Award came to be made the crops already stood harvested; consequently, there was no question of compensation for the crops having to be paid. The land in question therefore was outside the purview of the land acquisition Award. Once this legal position becomes explicit, the question of the land getting released from the land acquisition proceedings consequent upon their getting quashed simply does not arise.

Erroneous concession on question of law not binding

28. The reasons why the ***Balak Ram Gupta*** judgment did not apply at all in the present case have been discussed at length in paras 11 to 13 hereinabove and are therefore not repeated. This Court was informed on 8.8.1994 that the matter stood covered by the judgment in ***Balak Ram Gupta***. When the land in question did not stand acquired by the Award, there was no question of the matter being covered by the judgment in ***Balak Ram Gupta***. The order was therefore based on an erroneous concession made by the counsel for the respondent. It is settled that an erroneous concession cannot bind the respondents. It was explained by Hon'ble Supreme Court in ***Central Council for Research in Ayurveda vs. K. Santhakumari***

(2001) 5 SCC 60, that wrong concession on a question of law made before Court by counsel will not bind the client. This Court is therefore of the considered view that the very premise on which the order dated 8.8.1994 was made, did not exist in the eyes of law. The subsequent orders reiterating the said order does not change this legal position because they proceeded on the footing that the order dated 8.8.1994 being a consent order cannot be resiled from.

Order not capable of being implemented

29. Given the fact that the Ministry of Rehabilitation, which was the recorded owner of the lands in question, was not made a party to the petition and the petitioners did not indicate who was in possession of the land in question before they came into possession and to whom they lost possession and when, the direction to the respondents to hand over possession to the petitioners was not capable of being implemented.

30. The subsequent developments also have a bearing on the issue. The Hon'ble Supreme Court has in three decisions, viz., ***Abhey Ram***, ***Gurdeep Singh Uban (I)*** and ***Gurdeep Singh Uban (II)*** clarified that the judgment in ***Balak Ram Gupta*** is confined only to the 73 petitions in which the said judgment was passed. In other words the land acquisition proceedings stood valid as far as all other lands not covered by the 73 petitions.

31. The other important document which was not available earlier is the joint survey report which was prepared pursuant to the orders passed in the contempt petition. That report dated 19.5.2004 confirms the factual position that the recorded owner of the lands in question is

the Ministry of Rehabilitation, Government of India. It also records the fact that the petitioners do not say who took possession from them and when such possession was taken. With these very basic elementary factual details not being available, it is difficult to see how the order dated 8.8.1994 is supposed to be implemented.

32. A statement has been made in the written submissions of the petitioners for the first time that the Khasra girdawari dated 8.11.2005 indicates that the possession is "still with the Government of India". The document has not been enclosed. However, while this document is not inconsistent with the factual position that the petitioners are not in possession of the land in question, by itself this document cannot lead to an inference that there has been a willful disobedience of the order passed by this Court. In fact it indicates that the possession of the land in question is with the recorded owner.

The scope of the contempt proceedings

33. The contention of the petitioners that this Court is required to ensure compliance of the order dated 8.8.1994 notwithstanding the above factual and legal position now requires to be dealt with. Reliance has been placed on the judgment in ***State of Bihar vs. Rajendra Singh*** (supra) where the Hon'ble Supreme Court had held that "The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order." In the same judgment, it was held:

> "If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke

> jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. The Court cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings."

34. While the above statement of the law is unexceptionable, the Hon'ble Supreme Court has time and again reminded that the contempt power has to be exercised with circumspection. In the context of breach of an undertaking given on behalf of a party to the Court, the Hon'ble Supreme Court in ***Babu Ram Gupta vs. Sudhir Bhasin*** AIR 1979 SC 1528, after referring to the decision in ***Bhatnagars and Co. Ltd vs. Union of India*** AIR 1957 SC 478, has explained (AIR 1979 SC at page 1531):

> "Even if there was an undertaking given by the counsel on behalf of his client the undertaking should be carefully construed to find out the extent and nature of the undertaking actually given by the person concerned. It is not open to the Court to assume an implied undertaking when there is none on the record. It was on this ground that this Court negatived the plea of contempt of court. It is well settled that while it is the duty of the court to punish a person who tries to obstruct the course of justice or brings into disrepute the institution of judiciary this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and the dignity of the courts."

The other decisions in ***K.G. Derasari*** (supra) and ***Pallav Sheth*** (supra) cited by the petitioner also appear to have turned on the facts of those cases.

35. While the general proposition that the Court must ensure compliance with binding orders cannot be disputed, the justification for the exercise of the contempt power has to be examined on the facts of a particular case. As already noticed, in the instant case the erroneous concession on a question of law made by counsel for the respondents led to their consenting to the Order dated 8.8.1994 being passed. Such a concession, and the order made on that basis, cannot be said to be binding on the respondents. Just as much as it is the duty of the Court in its contempt jurisdiction to ensure that a party bound by a valid order is not allowed to flout that order, it is equally the duty of the Court to ensure that no injustice is caused by the implementation of an order that cannot be implemented or which, if implemented, would bring about a situation that cannot be justified in law. If the order dated 8.8.1994 were directed to be implemented unmindful of the factual and legal position discussed hereinabove it would tantamount to the Court putting a party not having any valid legal title, right or interest in possession of valuable property of which it is admittedly not the recorded owner and of which in fact the government is the recorded owner. This Court is not prepared to do that.

36. For all of the above reasons this Court is unable to grant the prayer made in the contempt petition. The petition is dismissed with no orders as to costs.

Sd/-
S. MURALIDHAR, J.

MARCH 16, 2007
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